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**Trimm Associates, Inc. and Glaziers Local 252, International Union of Painters and Allied Trades, District 21.** Case 4–CA–31353

October \_\_, 2002

**DECISION AND ORDER**

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

This is a refusal-to-bargain case in which the Respondent seeks to contest the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on May 29, 2002, the General Counsel issued the complaint on June 7, 2002, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to provide information following the Union's certification in Case 4–RC–20265. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On June 27, 2002, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On July 2, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 26, 2002, the Respondent filed a response to the General Counsel's Motion for Summary Judgment.

**Ruling on Motion for Summary Judgment**

The Respondent admits its refusal to bargain, but contests the validity of the certification based on its contention, raised and rejected in the representation proceeding, that the election results were tainted by improper electioneering. The Respondent also admits its refusal to provide information requested by the Union, but again denies that the Union was properly certified. The Respondent further asserts that it is without knowledge as to whether the information requested is necessary and/or relevant for purposes of collective bargaining.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any

representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing regarding the Union's request for information. The Union requested the following information from the Respondent by letter dated May 15, 2002:

[A] list of all non-salary employees appropriate to our unit, listing job title, wages and benefits they are now receiving.

The Respondent admits that it has refused to provide the Union with the requested information. As indicated, the Respondent's refusal rests on its previously rejected claim that the Union was improperly certified because the election results were tainted by improper electioneering. With respect to the Respondent's assertion that it is without knowledge as to whether the information requested is necessary and/or relevant for purposes of collective bargaining, it is well established that the foregoing type of information sought by the Union is presumptively relevant for purposes of collective bargaining and must be furnished on request unless its relevance is rebutted.<sup>1</sup> The Respondent has not attempted to rebut the relevance of the information requested by the Union. Instead, the Respondent relies solely on its challenge to the Union's certification as the basis for its denial that it has a duty to provide the Union with the requested information. We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested.<sup>2</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a Pennsylvania corporation with a facility in Media, Pennsylvania, has been engaged in performing commercial and residential glass installation services. During the calendar year preceding the issuance of the complaint, the Respondent, in conducting its business operations, purchased and re-

<sup>1</sup> See *Maple View Manor*, 320 NLRB 1149, 1150–1151 (1996); *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

<sup>2</sup> Member Liebman did not participate in the underlying representation proceeding. She agrees, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case, and that summary judgment is therefore appropriate.

ceived at its facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

Following the election held September 7, 2001, the Union was certified on March 5, 2002, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time commercial and residential glaziers, helpers and truck drivers employed by the Employer at its 316 Media Station Road, Media, Pennsylvania facility; but excluding office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. *Refusal to Bargain*

By letter dated May 15, 2002, the Union requested the Respondent to bargain and to furnish information, i.e., "a list of all non-salary employees appropriate to [the] unit, listing job title, wages and benefits they are now receiving." The information requested by the Union is necessary for, and relevant to the Union's performance of its duties as exclusive collective-bargaining representative of the unit employees. Since on or about May 15, 2002, the Respondent has failed and refused to bargain with the Union and furnish the requested information. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSIONS OF LAW

By failing and refusing on and after May 15, 2002, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union with requested relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respon-

dent to furnish the Union with the information requested by letter dated May 15, 2002.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Trimm Associates, Inc., Media, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Glaziers Local 252, International Union of Painters and Allied Trades, District 21, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Refusing to furnish the Union with the information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time commercial and residential glaziers, helpers and truck drivers employed by the Employer at its 316 Media Station Road, Media, Pennsylvania facility; but excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Furnish the Union with the information that it requested in its letter dated May 15, 2002.

(c) Within 14 days after service by the Region, post at its facility in Media, Pennsylvania, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 4

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 15, 2002.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October \_\_, 2002

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Wilma B. Liebman, Member

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William B. Cowen, Member

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Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Glaziers Local 252, International Union of Painters and Allied Trades, District 21, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time commercial and residential glaziers, helpers and truck drivers employed by us at our 316 Media Station Road, Media, Pennsylvania facility; but excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union with the information that it requested in its letter dated May 15, 2002.

TRIMM ASSOCIATES, INC.